

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 15, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL PETER SPITZAUER,

Defendant.

No. 2:13-cr-06071-SMJ

**ORDER DENYING
DEFENDANT'S REPETITIOUS
MOTION FOR
RECONSIDERATION**

Before the Court, without oral argument, is Michael Peter Spitzauer's *pro se* Motion for Reconsideration of Denial of Motion for Reconsideration and Motion of 2255, ECF No. 277. Spitzauer asks the Court to reconsider its June 6, 2019 order denying reconsideration of its May 20, 2019 order, which in turn denied his 28 U.S.C. § 2255 motion. *See* ECF Nos. 274, 276. The Court twice considered and rejected Spitzauer's challenge to his six-month prison sentence for committing new crimes in violation of his supervised release conditions. The Court declines to entertain Spitzauer's frivolous arguments a third time.

Just as before, Spitzauer fails to demonstrate a manifest error of law or fact, newly discovered or previously unavailable evidence, a manifestly unjust decision, or an intervening change in controlling law. *See Rishor v. Ferguson*, 822

1 F.3d 482, 491–92 (9th Cir. 2016) (quoting *Allstate Ins. Co. v. Herron*, 634 F.3d
2 1101, 1111 (9th Cir. 2011)); accord *McDowell v. Calderon*, 197 F.3d 1253, 1255
3 n.1 (9th Cir. 1999) (en banc).

4 The Court finds that Spitzauer has not made “a substantial showing of the
5 denial of a constitutional right,” 28 U.S.C. § 2253(b)(2), because “jurists of reason
6 could [not] disagree with the [Court]’s resolution of his constitutional claims or
7 ... conclude the issues presented are adequate to deserve encouragement to
8 proceed further,” *Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (quoting *Miller-El v.*
9 *Cockrell*, 537 U.S. 322, 327 (2003)). Therefore, the Court declines to issue a
10 certificate of appealability. See Fed. R. App. P. 22(b)(1); 28 U.S.C.
11 § 2253(c)(1)(B).

12 Additionally, given the frivolous nature of this filing, the Court directs
13 Defendant to request leave of Court prior to filing any additional motions for
14 reconsideration. Failure to abide may result in his filings being stricken.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 **1. Spitzauer’s Motion for Reconsideration of Denial of Motion for**
17 **Reconsideration and Motion of 2255, ECF No. 277, is DENIED.**


18 **2. A certificate of appealability is DENIED.**

19 **3. Defendant must request leave of Court prior to filing any additional**
20 **motions for reconsideration in this matter. The motions requesting**

1 leave may be no longer than three (3) pages.

2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
3 and provide copies to the *pro se* movant.

4 **DATED** this 15th day of July 2019.

5 
6 SALVADOR MENDOZA, JR.
United States District Judge